

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **VICE CHAIRMAN RICK DALE**, on March 19, 2001 at 3:00 P.M., in Room 152 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Rick Dale, Vice Chairman (R)  
Rep. Gail Gutsche, Vice Chairman (D)  
Rep. Keith Bales (R)  
Rep. Dee Brown (R)  
Rep. Gilda Clancy (R)  
Rep. Aubyn A. Curtiss (R)  
Rep. Larry Cyr (D)  
Rep. Ron Erickson (D)  
Rep. Linda Holden (R)  
Rep. Joan Hurdle (D)  
Rep. Rick Laible (R)  
Rep. Jeff Laszloffy (R)  
Rep. Douglas Mood (R)  
Rep. Bob Story (R)  
Rep. Brett Tramelli (D)  
Rep. David Wanzenried (D)

**Members Excused:** Rep. Cindy Younkin, Chairman (R)  
Rep. Rod Bitney (R)

**Members Absent:** Rep. Bill Eggers (D)  
Rep. Christopher Harris (D)

**Staff Present:** Holly Jordan, Committee Secretary  
Larry Mitchell, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 377, 3/13/2001; SB 408,  
3/13/2001  
Executive Action: SB 408

HEARING ON SB 408

Sponsor: SEN. BEA MCCARTHY, SD 29, Anaconda

Proponents: Janet Ellis, Montana Audubon  
Cary Hegreberg, Montana Wood Products Association  
Anne Hedges, MEIC  
John Youngberg, Montana Farm Bureau  
John Wilson, Trout Unlimited  
Dexter Busby, MRC & MPA  
Don Allen, WETA  
Ellen Allen, Custer, Pocket Creek Ranch  
Marjory Plummer, Billings, self  
Angela Janacaro, Montana Mining Association  
Barry "Spook" Stang, MMCA  
Charles Brooks, Billings Chamber  
Candace Durran, Helena, self  
Patrick Heffernan, Montana Logging Association  
M. S. Kakuk, Montana Contractors Association  
Jim Mockler, Montana Coal Council  
Rick Jordan, Butte, self  
Gail Abercrombie, Montana Petroleum Association  
Frank Crowley, ASARCO  
Peggy Trenk, Montana Association of Realtors  
Paul Buckley, Butte, self  
Al Kington, Montana Forest County Coalition  
John Bloomquist, Montana Stock Growers Association  
Tammy Johnson, League of Rural Voters  
Martin L. Johnson, Whitehall, self  
Pachy Burhs, Big Timber, self

Opponents: None.

Opening Statement by Sponsor:

*{Tape : 1; Side : A; Approx. Time Counter : 0.5}*

SEN. BEA MCCARTHY, SD 29, Anaconda, stated, SB 408 does not make the determination or significance any harder for the agency but it does require that the agency assure that the determination has been properly made and that the responsible party is the director of the agency. She gave a history of the bill.

Proponents' Testimony:

*{Tape : 1; Side : A; Approx. Time Counter : 3.1}*

**Janet Ellis, Montana Audubon** stated, this particular bill comes out as a recommendation from the 18 month study of MEPA. She urged a do concur.

**Cary Hegreberg, Montana Wood Products Association**, stated, a determination of significance under MEPA is what triggers an environmental impact statement versus a less rigorous environmental analysis. If an EIS is going to be triggered it is only appropriate that determination be made by a department director. He stated, this is a good bill and asked for a do concur.

**Anne Hedges, MEIC**, stated, this bill just makes sense and is a good idea.

**John Youngberg, Montana Farm Bureau**, stated, this was one of the items that came out of the interim study, with consensus. He urged a do concur.

**John Wilson, Trout Unlimited**, stated, he is in support of the bill.

**Dexter Busby, MRC & MPA**, stated, he is in support of the bill.

**Don Allen, WETA**, stated, he is in support of the bill.

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:**

*{Tape : 1; Side : A; Approx. Time Counter : 7.1}*

**REP. STORY** asked **SEN. MCCARTHY**, regarding page 3, line 29, is it the intent that if the director makes a determination that the activity is significant and the project sponsor disagrees then they can take that to the appropriate board? **SEN. MCCARTHY** stated yes. **REP. STORY** asked, what if the director determines that it is not significant and some other party thinks it should be? What is the course that they would follow? **SEN. MCCARTHY** stated, that isn't covered. **REP. STORY** asked, was that discussed in the process? **SEN. MCCARTHY** stated no but she would consider an amendment to address that.

**Closing by Sponsor:**

*{Tape : 1; Side : A; Approx. Time Counter : 8.8}*

SEN. MCCARTHY stated she will look at an amendment to address  
REP. STORY's concerns. She asked for a do concur.

HEARING ON SB 377

Sponsor: SEN. DUANE GRIMES, SD 20, Clancy

Proponents: Ed Regan, RY Timber Corporation  
Paul Buckley, Butte, self  
Al Kington, Montana Forest County Coalition  
Rick Jordan, Butte, self  
Tammy Johnson, League of Rural Voters  
Todd O'Hair, Governor's Office  
Julie Martin, Townsend, self  
John Youngberg, Montana Farm Bureau  
Cary Hegreberg, Montana Wood Products Association  
Frank Crowley, ASARCO  
Don Allen, WETA  
Dexter Busby, MRC & MPA  
Peggy Trenk, Montana Association of Realtors  
Martin L. Johnson, Whitehall, self  
Pachy Burhs, Big Timber, self  
Marjory Plummer, Billings, self  
Karen Zost, Billings, self  
Patsy Glaser, Huntley, self  
Marie Hanland, Dupuyer, self  
Margie Thompson, Wolf Creek, self  
Ellen Allen, Custer, Rocket Creek Ranch  
Jim Mockler, Montana Coal Council  
Gail Abercrombie, Montana Petroleum Association  
John Bloomquist, Montana Stock Growers Association  
Angela Janacaro, Montana Mining Association  
Barry "Spook" Stang, MMCA  
Charles Brooks, Billings Chamber  
Bob Williams, Hobson, self  
Patrick Heffernan, Montana Logging Association  
Michael S. Kakuk, Montana Contractors Association  
Margaret Morgan, Montana Petroleum Marketers

Opponents: Jeff Barber, MWF  
Anne Hedges, MEIC  
Greg Tollefson, Missoula, self  
John Wilson, Trout Unlimited  
Richard Parks, NPRC  
Janet Ellis, Montana Audubon  
Bob Stevens, Helena, self  
Steve Gilbert, Helena, self

George Nell, Gardiner, self  
Candace Durran, Helena, self  
Jim Sweany, Gardiner, self

**Opening Statement by Sponsor:**

***{Tape : 1; Side : A; Approx. Time Counter : 12.6}***

**SEN. DUANE GRIMES, SD 20, Clancy**, submitted written testimony after the hearing **EXHIBIT (nah62a01)**. He talked about the extreme environmentalist views. MEPA was never intended to be such an obstruction but a method of cautious, careful consideration. SB 377 sets sideboards on MEPA, the permitting process. The time lines in MEPA are intended to allow for the careful review under procedural standpoints. He went over the time lines. Under current MEPA law, if the agency has a sound reason to believe that the project would not meet Montana's strong environmental laws, none of which are being changed by SB 377, the agency could still withhold the permit. This bill directs the agencies to make a professional decision in a timely manner. It puts sideboards on MEPA so that when the sponsors propose a project they will know when they are going to hear the outcome. This could cause the agencies to decline a project rather than taking a great deal of time reviewing the project. At least then the sponsors will know. He went over the definitions in the bill. This bill reflects what MEPA intended to do all along.

**Proponents' Testimony:**

***{Tape : 1; Side : A; Approx. Time Counter : 22.6}***

**Ed Regan, RY Timber Corporation**, stated that RY supports SB 377 for the following reasons: The bill includes well defined time lines along with important definitions of several previously undefined terms. These changes should improve MEPA and streamline the process. Most importantly is the 30 day time limit placed on legal challenges. No longer will project opponents be able to file lawsuits at the 11<sup>th</sup> hour. He talked about a lawsuit against RY Timber. MEPA does not have to be an impediment to economic activity in the state. The passage of SB 377 will keep Montanans working.

**Paul Buckley, Butte, self**, submitted written testimony **EXHIBIT (nah62a02)**.

**Al Kington, Montana Forest County Coalition**, stated, the coalition is supporting all the changes to MEPA. There needs to be a timely resolution for the infrastructure of a new company. He urged a do concur.

**Rick Jordan, Butte, self**, submitted written testimony  
**EXHIBIT (nah62a03)**.

**Tammy Johnson, League of Rural Voters**, stated, it is hard to believe there is so much contention over this bill. There are time lines for everything we do in life. We should not expect that the state agencies in the permitting process can be the exception to that rule. MEPA is a look before you leap law, it is an information gathering law and it is a public participation process. She urged a do concur of SB 377. She submitted a packet of petitions **EXHIBIT (nah62a04)**.

**Todd O'Hair, Governor's Office**, stated that Governor Martz supports SB 377 and urges the committee to send it to her desk for signature.

**Julie Martin, Townsend, self**, submitted written testimony  
**EXHIBIT (nah62a05)**.

**John Youngberg, Montana Farm Bureau**, stated, this bill sets out some definitive time frames. He went over the bill. He stated that he was asked by **John Bloomquist, Montana Stock Growers Association**, to show his support.

**Cary Hegreberg, Montana Wood Products Association** stated the prospects of finding a job in Montana are dismal. We would like to have our kids stay and work in Montana but many of them can't. SB 377 is a good bill because it assures accountability within the state agencies that are responsible for granting permits. The bill forces agencies to make a decision. He gave some examples of where MEPA time lines hurt industry. This is not an issue that just affects mining and timber, it affects a lot of people who are trying to make a living in Montana. He urged a do concur.

**Frank Crowley, ASARCO**, submitted written testimony  
**EXHIBIT (nah62a06)**.

**Don Allen, WETA**, stated that SB 377 is part of an important package of bills that WETA worked on for several months. He asked for a do concur.

**Dexter Busby, MRC & MPA**, urged a do concur of SB 377.

**Peggy Trenk, Montana Association of Realtors**, urged a do concur of SB 377. Aidan Myhre from the Montana Chamber of Commerce also supports the bill. MEPA applies to major subdivisions although

an EIS is very rarely required. The Realtors couldn't afford extended time lines and costs that are associated with other projects.

**Patrick Heffernan, Montana Logging Association**, stated that he would concur with **Mr. Regan's** and **Mr. Hegreberg's** remarks. This is a proactive step to prevent delays in the future. He urged a do concur.

**Opponents' Testimony:**

***{Tape : 1; Side : A; Approx. Time Counter : 54.2}***

**Jeff Barber, MWF**, stated, from 1989 until 1998 Montana agencies did 17,376 MEPA reviews and only one was denied. This bill does nothing to change litigation. It raises more questions that will probably result in more litigation. He discussed the time frames. He went over the Fiscal Note. He urged the committee to table the bill.

**Anne Hedges, MEIC**, stated, what about updating and modernizing the 1872 mining law? The language on page 3, line 17 concerns her. "May only" is exclusive, the language should read "must also" as it is inclusive. ***{Tape : 1; Side : B; Approx. Time Counter : 0.1}*** The cumulative language should be consolidated into one place. This is going to create more lawsuits because citizens are going to be forced to sue when they feel that an agency hasn't looked at the potential cumulative impacts of a project. It will also create a lack of a proper analysis and a lack of time to bring suit. It is the citizens' right to a clean and healthful environment. SB 377 is confusing. One example is when you have timber sales going through the MEPA process in significant advance of the Land Board making a decision on that timber sale 60 days doesn't make any sense. She gave some examples that the bill won't affect. She urged the committee to oppose the bill.

**Greg Tollefson, Missoula, self**, submitted written testimony **EXHIBIT**(nah62a07) .

**John Wilson, Trout Unlimited**, stated, page 4, lines 15 - 18, of the bill, talks about project sponsors. Regarding state trust lands, what is an institutional beneficiary? They are each and every one of the school districts in the state, etc. He compared SB 377 to HB 459. Any requested reviews would be paid by the taxpayers. This bill makes MEPA more expensive. The intent of the bill is to speed the process but it actually slows the process down. He asked the committee to give consideration to striking the project sponsor language.

**Richard Parks, NPRC**, submitted written testimony  
**EXHIBIT**(nah62a08).

**Janet Ellis, Montana Audubon**, stated, with the passage of this bill which has four appeal processes to MEPA, HB 459, HB 473 and SB 408, there are going to be seven additional appeal processes in MEPA and the efficiency is going to grind to a halt. She urged a do not concur.

**Bob Stevens, Helena, self**, submitted written testimony  
**EXHIBIT**(nah62a09). He read that testimony which was determined, by **REP. DALE**, not to be related to the bill. **REP. DALE** ruled **Mr. Stevens** out of order.

**Steve Gilbert, Helena, self**, submitted written testimony  
**EXHIBIT**(nah62a10).

**George Nell, Gardiner, self**, stated that he is opposed to any streamlining of the MEPA law. We need to protect the environment.

**Questions from Committee Members and Responses:**

**{Tape : 1; Side : B; Approx. Time Counter : 22.9}**

**REP. MOOD** asked **Mr. Barber** who pays for the EIS? **Mr. Barber** stated, the project sponsor does. **REP. MOOD** asked, then a delay in inadequate data would be a delay to the project sponsor correct? **Mr. Barber** stated he is not sure what delays will be allowed with this bill. **REP. MOOD** asked, would you agree that it is in the best interest of the project sponsor to provide the necessary information to expedite the EIS? **Mr. Barber** stated he would hope so. **REP. MOOD** asked **Mr. Barber** to go through the scenario where defining the MEPA as procedural rather than substantive affects that situation. **Mr. Barber** compared SB 377 to HB 473. The one bargaining chip the agencies currently have on extending time frames is that if the time frame is not extended the permit will be denied. Therefore, you have to agree to the extension or you will be denied. That chip may be taken away with HB 473. **REP. MOOD** asked, do you think that will be done based on the fact that the laws would be defined as procedural rather than substantive? **Mr. Barber** stated, yes.

**REP. STORY** asked **SEN. GRIMES**, regarding page 7 of the bill, line 3 - 4, there is some question regarding timber sales, what is the final action in that? **SEN. GRIMES** stated, the intention is not to prevent somebody an opportunity once the agency has made a decision. The way the wording currently reads suggests that a



challenge could be made in either case. He suggested **REP. STORY** redirect the question to the Wood Products Association. **REP. STORY** asked, would it be your preference have the 60 days start upon the completion of the EIS or when the Land Board Makes a sale? **SEN. GRIMES** stated, if the agency has made a final determination and there are no more things to consider in the EIS then that would be the preferable time for that time frame to begin to kick in.

**REP. STORY** asked **Mr. Crowley**, regarding page 7 of the bill, lines 3 - 4, can legal action only be brought on procedural issues? **Mr. Crowley** stated, he believes that is correct. **REP. STORY** asked, regarding the wording on line 6, what do you do if there are two challenges at once? **Mr. Crowley** stated, that is unlikely. The way most administrative boards would probably handle that would be to schedule the hearings at the same hearing. The notice may say the hearing on the issue is to be held at 9:00a.m. or sometime thereafter. The language is suggesting that MEPA hearings will take precedence over any other hearings. **REP. STORY** asked can the legislature tell the District Court how to schedule the cases? **Mr. Crowley** stated these kinds of provisions are not frequent but they do occur in law.

**REP. ERICKSON** asked **Mr. Crowley** regarding page 7, line 10, what does the language "unless otherwise provided by law" mean? **Mr. Crowley** gave an example on writs.

**REP. ERICKSON** asked **SEN. GRIMES**, have you considered the concern by **Mr. Wilson** about the potential of having 400 school district project sponsors? Why is that in the bill? **SEN. GRIMES** stated the project sponsor can appear to provide notice. This just gives them a say in the action on the School Trust Lands that affects their funding. **REP. ERICKSON** asked, why are they project sponsors? It seems that a project sponsor would be the company that wants to do the action. **SEN. GRIMES** stated, the language specifically includes any beneficiary of the trust to provide them with the opportunity to appear before the board or the agency in order to address problems. **REP. ERICKSON** asked **SEN. GRIMES** to comment regarding cumulative impacts and the fact that there seems to be a part of the definition in two different places. Particularly on page 3, line 17, it seems that would belong in the definition area. Would that be a friendly amendment? **SEN. GRIMES** stated, if this language was not in this section of the bill it wouldn't be defined anywhere. It talks about how cumulative impacts will be used. That is not too dissimilar to what is done in other bills. It seeks to define it because it is being used. That is why it is in the two sections. **REP. ERICKSON** asked, why shouldn't the language "must also"

instead of "may only" be used? **SEN. GRIMES** stated then you have undermined the entire purpose of the bill. We just want to make sure that the uses for that land that are being concerned are the ones that will be considered in the cumulative impact, not hypothetical things that may never come to occur. **REP. ERICKSON** asked, for example lets say the action being considered is a new logging operation and another logging operation has been granted in a neighboring area, does this language allow cumulative impacts to talk about something that has been approved but has not yet happened? **SEN. GRIMES** stated absolutely. If it is just an idea then it would not. If it is something that has been considered and approved that's a concurrent action. If it's already been approved then it would be addressed in the EIS process. **REP. ERICKSON** asked, regarding complete applications, in HB 147 there is a strong definition of what a complete application is. The language in SB 377 is not as strong at that language in HB 147. Would you be willing to use the kind of language in HB 147 regarding what a complete application is? **SEN. GRIMES** stated, complete application is defined on page 4, lines 4 - 6. He stated that he is not familiar with HB 147 but believes the language is coordinated with SB 377. **REP. ERICKSON** stated that the committee should look at the language in the two bills.

**REP. GUTSCHE** asked **SEN. GRIMES**, regarding the application process, can you imagine a time when an application would be complete but wouldn't contain everything that is needed to make a sound judgement? **SEN. GRIMES** stated, if it is not complete then the time lines don't begin. It would be up to the agency to make that decision. **REP. GUTSCHE** asked, according to the definition it could contain all of the data, studies, etc., but maybe the data is inaccurate or maybe there is data not included, etc. **SEN. GRIMES** stated, all the data that is being talked about is what is required by the department and other substantive law. He gave an example regarding water quality monitoring. **REP. DALE** stated, the permit application is submitted, the department reviews it and if the agency determines that a permit application is not complete they issue deficiency letters. That loop can occur several times until the department is sure that they have addressed the completeness requirements of an application. Where there is an acceptability standard they will let that process go and work the deficiency route until it gets to acceptability. **REP. GUTSCHE** asked **SEN. GRIMES** if he would consider it a friendly amendment to use the wording from HB 147. **SEN. GRIMES** stated that there would have to be some coordination between the bills because they are in the same section of law.

**REP. LAIBLE** asked **SEN. GRIMES**, regarding page 4, lines 15 - 17, the way it is written seems to say that anything that includes a

School Trust Land could include the inclusion of any other beneficiary of the School Trust Land. He gave an example. **SEN. GRIMES** stated, then you are saying someone in southwestern Montana may take exception to something done in northeastern Montana. **REP. LAIBLE** stated, or could. **SEN. GRIMES** stated the concern on the Senate side was that this be not so broad as to include any individual. He would have to take a look at who would actually be the beneficiary. The way it is written it could be any beneficiary. Lines 17 - 18 were added by amendment and some technical explanation may be needed. **REP. LAIBLE** stated, as he reads this you could get about 8.5 months without the approval of the sponsor just by the actions of the agency. **SEN. GRIMES** stated, then you are saying these time frames can be extended 50% and then by mutual agreement may be extended further than that. That assumption is correct.

**REP. MOOD** asked **Mr. Hegreberg**, under current law can individual school districts intervene in projects that are taking place on School Trust Land. **Mr. Hegreberg** stated individual school districts do have standing in court in the management of School Trust Lands. **REP. MOOD** asked, are you familiar with the language on page 5, lines 16 - 17? **Mr. Hegreberg** stated yes. **REP. MOOD** asked, does that language in any way change that? **Mr. Hegreberg** stated, it is important to understand when activities are proposed on State Trust Lands there is a beneficiary for each tract of land. In some cases that beneficiary is the common schools which is the K - 12 public education system. About 2/3 of the trust land in Montana is common School Trust Land. Every school district is a beneficiary of those common school lands. The funds from those lands go into the OPI and are distributed to each school district based on the equalization formula the state uses. In other cases those areas are specific institutions and one could allege that if a project is proposed on their land they are the project sponsor. An agency of state government is administering those lands on behalf of the beneficiary but a project proposed on land that is designated to that beneficiary thereby makes them, in essence, a project sponsor.

**REP. GUTSCHE** asked **Ms. Hedges** to respond to **REP. MOOD's** round of questioning. **Ms. Hedges** stated, there were technical inaccuracies in what **Mr. Hegreberg** said but the essence of what he said is true. Every person in the state is a beneficiary of the trust.

**Closing by Sponsor:**

***{Tape : 1; Side : B; Approx. Time Counter : 62.2}***

**SEN. GRIMES** closed. The testimony that was submitted as **Exhibit(1)** addressed the issues which he spoke of in his closing. **{Tape : 2; Side : A; Approx. Time Counter : 0.1}** He urged a do concur.

**EXECUTIVE ACTION ON SB 408**

**{Tape : 2; Side : A; Approx. Time Counter : 4.5}**

**Motion:** **REP. ERICKSON** moved that **SB 408 BE CONCURRED IN.**

**Discussion:**

**REP. HOLDEN** asked, isn't there a place where **REP. STORY** stated an amendment may be needed? He is not here now.

**Mr. Mitchell** explained the possible amendment.

**REP. LAIBLE** stated that he saw **REP. STORY's** concern in a different way. He asked the committee to hold off on executive action until **REP. STORY** can be there.

**REP. YOUNKIN** stated that executive action will be put off to give **REP. STORY** the opportunity to talk to **Mr. Mitchell** about the amendment.

**ADJOURNMENT**

Adjournment: 5:45 P.M.

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REP. CINDY YOUNKIN, Chairman

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HOLLY JORDAN, Secretary

CY/HJ

**EXHIBIT (nah62aad)**